

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
Eastern DIVISION

Rosalind M. Cross)  
NAME OF THE PLAINTIFF )

- vs - )

David S. Ferriero,)  
Archivist of the United States)

Case No.

NAME OF THE DEFENDANT OR )  
DEFENDANTS (Enter above the full name(s) of )  
ALL defendant(s) in this lawsuit. Please )  
attach additional sheets if necessary. )

JURY TRIAL DEMANDED

YES  NO

*Jury Trial*

**EMPLOYMENT DISCRIMINATION COMPLAINT**

1. This employment discrimination lawsuit is based on (check only those that apply):

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, for employment discrimination on the basis of race, color, religion, gender, or national origin.  
**NOTE:** *In order to bring suit in federal district court under Title VII, you must first obtain a right-to-sue letter from the Equal Employment Opportunity Commission.*

Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621, *et seq.*, for employment discrimination on the basis of age (age 40 or older).  
**NOTE:** *In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file charges with the Equal Employment Opportunity Commission.*

American with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, *et seq.*, for employment discrimination on the basis of disability.  
**NOTE:** *In order to bring suit in federal district court under the American with Disabilities Act, you must first obtain a right-to-sue letter from the Equal Employment Opportunity Commission.*

Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701, et seq., for employment discrimination on the basis of a disability by an employer which constitutes a program or activity receiving federal financial assistance.

**NOTE:** In order to bring suit in federal district court under the Rehabilitation Act of 1973, you must first file charges with the appropriate Equal Employment Office representative or agency.

Other (Describe)

Retaliation

PARTIES

2. Plaintiff's name: Rosalind M. Cross

Plaintiff's address: 4634 Korte  
Street address or P.O. Box

St. Louis, MO 63115  
City/ County/ State/Zip Code

(314) 801-0594

Area code and telephone number

3. Defendant's name: David S. Ferriero

Defendant's address: 700 Pennsylvania Ave Nw  
Street address or P.O. Box

Washington, DC 20408-0001  
City/County/State/ Zip Code

(202) 357-5900

Area code and telephone number

**NOTE: IF THERE ARE ADDITIONAL PLAINTIFFS OR DEFENDANTS, PLEASE PROVIDE THEIR NAMES, ADDRESSES AND TELEPHONE NUMBERS ON A SEPARATE SHEET OF PAPER.**

4. If you are claiming that the discriminatory conduct occurred at a different location, please provide the following information:

1 Archives Drive St. Louis MO 63138  
(Street Address) (City/County) (State) (Zip Code)

5. When did the discrimination occur? Please give the date or time period:

August 8, 2011 1122STL

**ADMINISTRATIVE PROCEDURES**

6. Did you file a charge of discrimination against the defendant(s) with the Missouri Commission on Human Rights?

Yes Date filed: \_\_\_\_\_  
 No

7. Did you file a charge of discrimination against the defendant(s) with the Equal Employment Opportunity Commission or other federal agency?

Yes Date filed: August 16, 2011  
 No

8. Have you received a Notice of Right-to-Sue Letter?

Yes  No

If yes, please attach a copy of the letter to this complaint.

9. If you are claiming age discrimination, check one of the following:

60 days or more have passed since I filed my charge of age discrimination with the Equal Employment Opportunity Commission.  
 fewer than 60 days have passed since I filed my charge of age discrimination with the Equal Employment Opportunity Commission.

**NATURE OF THE CASE**

10. The conduct complained of in this lawsuit involves (check only those that apply):

- failure to hire me
- termination of my employment
- failure to promote me
- failure to accommodate my disability
- terms and conditions of my employment differ from those of similar employees
- retaliation
- harassment
- other conduct (specify): \_\_\_\_\_
- 
- 
- 

Did you complain about this same conduct in your charge of discrimination?

- Yes       No

11. I believe that I was discriminated against because of my (check all that apply):

- race  
 religion  
 national origin  
 color  
 gender  
 disability

age (my birth date is: \_\_\_\_\_)

other: Retaliation - Previous EEC Complaint

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Did you state the same reason(s) in your charge of discrimination?

Yes       No

12. State here, as briefly and clearly as possible, the essential facts of your claim. Describe specifically the conduct that you believe is discriminatory and describe how each defendant is involved in the conduct. Take time to organize your statement; you may use numbered paragraphs if you find it helpful. It is not necessary to make legal arguments, or to cite cases or statutes.

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See attached - Prima Facie & Descriptions

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(Attach additional sheets as necessary).

13. The acts set forth in paragraph 12 of this complaint:

       are still being committed by the defendant.

       are no longer being committed by the defendant.

X may still be being committed by the defendant.

**REQUEST FOR RELIEF**

State briefly and exactly what you want the Court to do for you. Make no legal arguments; cite no cases or statutes.

See attached - Suggested Settlements

Signed this 28 day of June, 2013<sup>th</sup>

Pamela M Cray  
Signature of Plaintiff



**U.S. EQUAL OPPORTUNITY COMMISSION  
Office of Federal Operations  
P.O. Box 77960  
Washington, DC 20013**

Rosalind M. Cross,  
Complainant,

v.

David S. Ferriero,  
Archivist of the United States,  
National Archives and Records Administration,  
Agency.

Request No. 0520130108

Appeal No. 0120121254

Agency No. 1122STL

**DENIAL**

Complainant timely requested reconsideration of the decision in Rosalind M. Cross v. National Archives & Records Administration, EEOC Appeal No. 0120121254 (October 10, 2012). EEOC Regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision where the requesting party demonstrates that: (1) the appellate decision involved a clearly erroneous interpretation of material fact or law; or (2) the appellate decision will have a substantial impact on the policies, practices, or operations of the agency. See 29 C.F.R. § 1614.405(b).

On September 30, 2012, Complainant filed a formal complaint. Therein, Complainant claimed that the Agency subjected her to discrimination in reprisal for prior protected activity when:

1. the Agency reviewed applications for Job Announcement No. JD474812SB;
2. the selecting official for Job Announcement No. JD474812SB demonstrate favoritism during the selection process; and
3. Midwest Litigation, a third party court reporting company, billed Complainant for the cost of a hearing transcript associated with a hearing before an EEOC Administrative Judge for a previous complaint.

The Agency dismissed the complaint for failure to state a claim, and the prior decision affirmed. The prior decision specifically found Complainant did not intend to allege a nonselection in the instant case. In her request, Complainant argues that the complaint was improperly dismissed. After reviewing the previous decision and the entire record, the Commission finds that the request fails to meet the criteria of 29 C.F.R. § 1614.405(b), and it

is the decision of the Commission to deny the request. Complainant failed to establish that the prior decision involved a clearly erroneous interpretation of material law or fact. The decision in EEOC Appeal No. 0120121254 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (P0610)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court within ninety (90) calendar days from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work.

RIGHT TO REQUEST COUNSEL (Z0610)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request from the Court that the Court appoint an attorney to represent you and that the Court also permit you to file the action without payment of fees, costs, or other security. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney with the Court does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File a Civil Action").

FOR THE COMMISSION:

Carlton M. Hadden  
Carlton M. Hadden, Director  
Office of Federal Operations

APR 02 2013  
Date

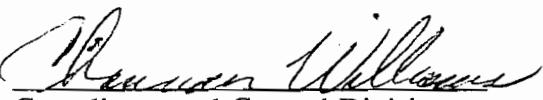
CERTIFICATE OF MAILING

For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:

Rosalind M. Cross  
4634 Korte  
Saint Louis, MO 63115

Robert Jew, EEO Director  
National Archives and Records Administration  
8601 Adelphi Rd. #3110  
College Park, MD 20740-6001

APR 02 2013  
Date

  
Compliance and Control Division

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3. Prima Facie – Disparate Treatment

D. Description of conduct and defendants

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E. Aggrievements

F. Suggested settlement

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H. Abbreviations

**A**

**Reason for EEO complaint -**

**email and invoice**

SEP 7 2011  
*[Signature]*

**Shaun Walker - review and advise**

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**From:** Jason Hardy  
**To:** Bauman, Barbara; Greenlee, Donald; Raffel, Melanie; Stewart, Joseph; ...  
**Date:** 8/8/2011 4:41 PM  
**Subject:** review and advise

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Ladies and gents,

I need your help. At this directory: T:\Hardy\GS12 Management Analyst

You'll find a list of 10 candidates for the vice Schumacher position. Please review each candidate, write your comments in a word doc and email it to me.

Although this is to back-fill Kevin's position, finance/accounting skillset is not a must-have but I would be very thankful if available. Procurement/acquisition experience is always good to have.

I'd like to reduce the list further, perhaps down to 5, for the interview process. Or, if a clear winner emerges, simply select him or her.

Please note that our own Ros is one of the candidates.

Mr. Griffith was one of our recent favorites and was an alternate if Dan Hunter was not available. He interviewed very well.

Please respond by COB Wednesday. If you can not do this for any reason, please let me know.

J

M

**C.O.D.****Midwest Litigation Services**

An Affiliate of National Depo

711 North 11th Street

St Louis MO 63101

Telephone: 314-644-2191 Fax: 314-644-1334

Bill To: Rosalind M Cross ProSe  
 Rosalind M Cross ProSe  
 4694 Corne Street  
 St Louis MO 63115

Invoice #: STL121814  
 Invoice Date: 04/15/2011  
 Balance Due: \$ 439.25

Case #: 560200900222X

Case: Rosalind M Cross v. National Archives and Records Administration  
 Job #: 92261 | Job Date: 3/29/2011 | Delivery: Normal  
 Billing Atty: Rosalind M Cross ProSe  
 Location: EEOC Office  
 1222 Spruce Street | Room 8100 | St Louis, MO 63103

Item	Description	Units	Qty	Price	Amount
Transcript of Proceedings	Transcript - copy/copies	Page	251.00	\$1.75	\$439.25
Notes: E-Tran & Full Size for pick up a.m. 4-14-11				Invoice Total:	\$439.25
				Payment:	\$0.00
Fed Tax ID: 20-3132569	Term: Due Upon Receipt			Credits:	
				Balance Due:	\$439.25

CRMS is payable upon receipt. Accounts unpaid after 90 days agree to pay all collection costs, including reasonable attorney's fees.  
 Contact us to cancel payment terms. No adjustments or refunds will be made after 90 days.

**THIS INVOICE IS 108 DAYS PAST DUE, PLEASE REMIT - THANK YOU**

Make check payable to "National Depo"

Visa  MC  Amex  Discover  Lock Box

Credit Card #

Exp. Date

Invoice #: STL121814

Job #: 92261

Invoice Date: 04/15/2011

Balance : \$ 439.25

SIGNATURE (AS IT APPEARS ON CREDIT CARD)

PRINT NAME (AS IT APPEARS ON CREDIT CARD)

DAYTIME PHONE

Please remit payment to:

National Depo  
 P.O. Box 404743  
 Atlanta, Ga 30384-4743

**neighbors**

CREDIT UNION

6300 S. LINDBERGH

ST LOUIS MO 63123

ROSALIND CROSS  
4709 KOSSUTH AVE  
SAINT LOUIS MO 63115-2105

**ACCOUNT SUMMARY**

Account number xxxx-xxxx-xxxx-6596

New balance [REDACTED]

Minimum payment due [REDACTED]

Payment due date by 5:00 p.m. 05/23/11

AMOUNT \$ [REDACTED]  
ENCLOSED

Please make your payment payable to:  
NEIGHBORS CRÉDIT UNION

Address Change? Check box Print new address  
and telephone number on back of this form.

VISA  
PO BOX 660348  
DALLAS TX 75266-0348

Detach the top portion and return payment using enclosed envelope to be received no later than 5:00 p.m. on the due date. Please use blue or black ink.

1-2



**SUMMARY OF ACCOUNT ACTIVITY**

Account Number	xxxx-xxxx-xxxx-6596	Statement Closing Date	04/28/11
Credit Limit	[REDACTED]	Previous Balance	[REDACTED]
Available Credit	[REDACTED]	Payments	[REDACTED]
Cash Advance Limit	[REDACTED]	Other Credits	[REDACTED]
Available Cash	[REDACTED]	Purchases	[REDACTED]
Past Due Amount	\$0.00	Cash Advances	\$439.25
Overlimit Amount	\$0.00	Other Debits	\$0.00
Questions? Call Cardholder Service	800-654-7728	Fees Charged	\$0.00
Lost or Stolen Card	800-449-7728	Interest Charged	\$0.00
Please send billing inquiries and correspondence to:		New Balance	[REDACTED]
CUSTOMER SERVICE P.O. BOX 31112 TAMPA, FLORIDA 33631-3112		Days in Billing Cycle	30
Remit payment to:			
PO BOX 660348	DALLAS TX 75266-0348		

**PAYMENT INFORMATION**

Minimum Payment Due	\$25.00	Payment Due Date	05/23/11
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**Late Payment Warning:**

If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to \$25.00 and your APR may be increased up to the penalty APR of 29.990%.

**Minimum Payment Warning:**

If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. The table is based on your standard minimum payment and does not include any past due and overlimit amounts. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on this statement in about...	And you will end up paying an estimated total of...
Only the minimum payment	9 years	\$1,482
\$33	3 years	\$1,189 (Savings = \$293)

If you would like information about credit counseling services, call 1-888-456-2227.

**TRANSACTIONS**

Trans	Post	Reference Number	Description	Amount
04/15	04/17	24158138A32Y1Y7N1	NATIONAL DEPO	973-4104020 NJ
				439.25

Fees:

**B**

**EEO Complaint submitted**

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## Rosalind Cross - Reprisal/Retaliation

**From:** Rosalind Cross  
**To:** Jew, Robert; Walker, Shaun  
**Date:** 8/16/2011 5:36 PM  
**Subject:** Reprisal/Retaliation  
**Attachments:** RMCh-3058.docx; RMCRetaliationMSPBEO1.docx

**SUBJECT:** Reprisal/Retaliation

I would like to file a Reprisal/Retaliation complaint.  
If eligible, I would like this to be a "mixed case", putting MSPB first.  
Attached is the form NA 3058 and explanations.

I can fax or mail the signed copy to you. If you prefer fax, I can do this in the morning after I get your fax number.

thanks

## INITIAL CONTACT SHEET

Important: Please read Privacy Act Statement on the last page of this form.

Name:	Rosalind M. Cross	Location/Organization Code:	AFN
Position Title:	Management Analyst	Series, Grade and Step:	GS-11
Home Address:	4634 Korte	Work Address:	1 Archives Drive St. Louis, MO
Home Phone Number	314-385-6095	Work Phone Number:	314-801-0594
Fax Number:	NA	Email Address:	Rosalind.cross@nara.gov
Work Hours:	40		

### DESCRIPTION OF ALLEGATION

Date of action giving rise to the incident(s): August 2011

Date you became aware of the incident(s): August 2011

Date you contacted an EEO Counselor: August 16, 2011

Where did the incident occur? At work

Name of person(s) involved in your issue(s) or the person(s) who can respond to your concerns:  
Various

Description of the incident(s) or the nature of the allegation(s): See attached

Prohibited Personnel practices

Unfair treatment

Treated differently than other employees

Higher level of scrutiny than other NRPC applicants

Harassment, obstruction and conduct disorder

What were the consequences or the outcome of the alleged discriminatory incident(s)?

Complete damages are unknown at this time.

What would you like to occur to resolve the allegation(s)? What would remedy the situation?

The totality of the problems are unknown at this time. I would like to reserve my rights for a remedy.

**INCIDENT(S) and BASIS(ES):** Check all incidents and basis that apply from the lists below. If there are multiple incidents and/or bases and they occurred on different dates, please provide the dates when each of them occurred or when you became aware of them. Each incident must be paired with a basis(es).

#### INCIDENTS/ALLEGATIONS

✓	INCIDENT/ALLEGATION	DATE MM/DD/YY	✓	INCIDENT/ALLEGATION	DATE MM/DD/YY
<input type="checkbox"/>	Appointment/Hire		<input type="checkbox"/>	Pay Including Overtime	
<input type="checkbox"/>	Assignment of Duties		X	Promotion/Non-selection	
<input type="checkbox"/>	Awards		<input type="checkbox"/>	Reassignment Denied	
<input type="checkbox"/>	Conversion of Full Time		<input type="checkbox"/>	Reassignment Directed	
<input type="checkbox"/>	Disciplinary Actions <input type="checkbox"/> Demotion <input type="checkbox"/> Reprimand <input type="checkbox"/> Suspension <input type="checkbox"/> Removal <input type="checkbox"/> Other		<input type="checkbox"/>	Reasonable Accommodation (specify)	
<input type="checkbox"/>	Duty Hours		<input type="checkbox"/>	Reinstatement	
<input type="checkbox"/>	Evaluation/Appraisal		<input type="checkbox"/>	Retirement	
<input type="checkbox"/>	Examination/Test		<input type="checkbox"/>	Termination	
<input type="checkbox"/>	Harassment (Non-sexual)		<input type="checkbox"/>	Terms/Conditions of Employment	
<input type="checkbox"/>	Harassment (Sexual)		X	Other (specify) See description list	
<input type="checkbox"/>	Medical Examination				

#### BASIS

✓	BASIS	✓	BASIS
<input type="checkbox"/>	Age (specify) Date of Birth _____	<input type="checkbox"/>	Race (specify) <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White
<input type="checkbox"/>	Color (specify)	<input type="checkbox"/>	Religion (specify)
<input type="checkbox"/>	Disability – Mental (specify)	X	Reprisal (provide date(s) of prior EEO activity) See attached
<input type="checkbox"/>	Disability – Physical (specify)	<input type="checkbox"/>	Sex/Gender (specify) <input type="checkbox"/> Male <input type="checkbox"/> Female
<input type="checkbox"/>	National Origin (specify) <input type="checkbox"/> Hispanic <input type="checkbox"/> Other		Race and color

Were there any witnesses? If yes, please provide name(s) and phone numbers:  
The total number of people involved is unknown at this time.

Are compensatory damages being claimed?

Complete damages are unknown at this time. I would like to reserve my rights to claim damages at a later time.

Do you wish to remain anonymous? NO

Do you elect to have a representative? If so, list the representative's name, address and phone number: I would like to reserve my rights for representation.

Has this case been submitted in another forum other than EEO? If yes, which forum (e.g. RESOLVE; grievance process; MSPB; court; other) and when: No

Signature of the Employee/Applicant:

Date:

**FOR NEEO USE ONLY:**

NARA Case Number:

Is the case alleged as a class complaint?

Is this a mixed case complaint?

Date of extension of counseling:

Date counseling concluded:

Date of final interview:

Date of Notice of Potential Complainant Rights and Responsibilities:

Date of Notice of Final Interview/Right to File a Formal Complaint of Discrimination:

Method of Issuance (e.g. certified mail; fax with signed copy returned; personal pickup with signed acknowledgement, federal express):

Date of Counselor's Report:

Date of Withdrawal:

**PRIVACY ACT STATEMENT**

**GENERAL:** Upon completion by the aggrieved individual, this form will be reviewed by the Office of Equal Employment Opportunity and Diversity Programs and used for processing complaints of discrimination based on race, color, religion, sex, national origin, age, mental or physical disability, and reprisal lodged by the National Archives and Records Administration employees, former employees and applicants for employment, and some contract employees.

**AUTHORITY:** Public Law 92-261 (Equal Employment Opportunity Act 1972) and 29 CFR 1614

**PURPOSE AND ROUTINE USES:** Information will be used: 1) To process and adjudicate a complaint or an appeal; 2) As a data source of complaint information for producing summary statistics and analyses of complaints processing and resolution efforts; 3) To respond to general requests for information under the Freedom of Information Act; and 4) To respond to requests regarding the status of an EEO complaint or appeal.

**EFFECTS OF NONDISCLOSE:** Providing this information is voluntary, however, failure to complete all appropriate portions of the form may lead to a delay in processing and/or dismissal of the allegation(s) on the basis of inadequate data with which to continue processing.

**C**

**In accordance with  
Appendix L-4 EEO-MD-110  
MODEL FOR ANALYSIS:**

**Prima Facie – Hire/Promotions**

**Prima Facie - Retaliation**

**Prima Facie – Disparate Treatment**

Rosalind Cross 1122STL

## Appendix L-2 EEO-MD-110

### HIRING/PROMOTION MODEL FOR ANALYSIS

#### PRIMA FACIE CASE

- 1) Complainant is a member of a protected group
  - 2) Was there a vacancy?
  - 3) Did complainant apply?
  - 4) Was complainant qualified; was complainant rejected?
  - 5) Was the vacancy filled? Is there direct evidence that shows discriminatory intent?
- 

- I am a member of a protected class
  - Vacancy Announcement No. JD474812SB
  - I applied for the above position
  - I made the Best Qualifying list and was referred; not selected (only internal candidate referred);
  - There is direct evidence that shows discriminatory intent
- 

For a promotion, direct evidence has shown retaliation and discriminatory intent by:

- Me being the only employee at NRPC to experience this process
  - The process was changed and different than the processes used at NRPC
  - The Privacy Act and the Personal Identifying Information (PII) regulations were not applied
  - My co-workers were able to comment, vote, and reduce the candidate list
- 

No White, Management System Staff, Management Analyst employee at the National Personnel Records Center (NPRC), for a promotion, has experienced, the changes in the:

- Process - Exposing an employees' Personal Identifying Information (PII)
- Process - All office co-workers having electronic access to their application
- Process - Co-workers voting, commenting and reviewing one's application
- Process - Scrutinized by 6 or more co-workers

## Appendix L-4 EEO-MD-110

### RETALIATION MODEL FOR ANALYSIS

#### PRIMA FACIE CASE

- 1) Had the complainant previously engaged in protected activity or opposed unlawful discrimination?
  - 2) Was the agency aware of complainant's activity?
  - 3) Was complainant contemporaneously or subsequently adversely affected by some action of the agency?
  - 4) Does some connection exist between complainant's activity and the adverse employment decision?
- 

- My previous EEO activity is EEOC Case No. 560-2009-00222X, Agency No. 0905STL
  - The Agency was aware if my complaint
  - I was adversely affected by the action of the agency (See Aggrievement page)
  - The connections exist between the activity and the adverse employment decision
- 

The connections exist between the activity and the adverse employment decision, when I compared:

- My application experience to other Mgt. Analyst employees with no previous EEO activity
- My application experience to my previous application experience

I have applied for 2 jobs in last 5 years and both times I made the Best Qualifying List (BQL) and both times:

The process was different and changed when:

- I applied for a job in 2008 "a new initiative" created ; 3 co-workers reviewed
- I applied for a job in 2011 "a team building initiative" created ; 6 co-workers reviewed

I am the only Management Analyst employee at NRPC to experience both of these processes.

---

The below retaliation and adverse activities would deter an employee from EEO activities.

Employees who have not participated in EEO activities have never experienced their:

- Application processed in this manner
- Personal Identifying Information (PII) being accessible to the entire office
- Application being made available for 6 co-workers to review, comment or vote on
- Application put on the office computer drive
- Or
- Income being spent on something the Agency was responsible for paying( hearing transcript). The same month I applied for a promotion, I was billed for being 108 days late paying.

## Appendix L-1 EEO-MD-110

### DISPARATE TREATMENT MODEL FOR ANALYSIS

#### PRIMA FACIE CASE

- 1) Membership in protected group
- 2) Complainant treated differently from similarly situated employees not in protected group
  - a) Were compared employees in same chain of command as complainant?
  - b) Were compared employees in same work unit as complainant?

- I am a minority (African American)
- I have been treated differently from similarly situated employees not in a protected group
- I have been treated differently from employees in the same chain of command
- I have been treated differently from employees in the same work unit

---

Alike myself; I compared employees who:

Work for the National Personnel Records Center (NPRC) and/or

Work for the same Director and/or

Are Management Analyst and/or

Work for the Management System Staff

**D**

**Description of :**

**Conduct and Defendants**

## Failure to Promote

### **Description of specific conduct that was discriminatory/retaliation and the defendant.**

**Conduct:** Retaliation, Discrimination and Disparate treatment: **Defendant:** Supervisor of the MSS

I am the only NRPC, MSS, Management Analyst employee applicant whose entire office could access, view, print and/or distribute another employees':

- Social security number
- Home address
- Phone numbers (home and cell)
- SF-50
- Annual rating in its entirety
- Application package
- Resume

I am the only NRPC, MSS, Management Analyst employee whose application package was:

- Put on the office computer drive for co-workers to review
- Put on the office computer drive to solicit comments from other higher graded co-workers
- Put on the office computer drive, allowing other higher graded co-workers to cast their vote/choice

I am the only National Personnel Record Center (NPRC), Management Systems Staff, Management Analyst employee, who has put in for two jobs, and the process was changed both times.

2008, Created "*a new initiative*"; panels were created (Hearing transcript pg. 131)

- No other NRPC Management System Staff, Management Analyst had to interviewed with panels for their job
- No other NRPC Management Analyst ( later) had panels that consisted of all direct co-workers

2011, Created "*team-building initiative*" (Agency Response); 6 direct co-workers were invited to review, provide comment, vote and possibly eliminate another employees' application

This was not done with the white male, hired the same month as this job announcement

- I am the only NRPC, MSS, Management Analyst employee whose application package was processed in this manner.
- I am the only NRPC, MSS, Management Analyst employee whose promotion/selection process has been done in this manner.
- I am the only NRPC, MSS, Management Analyst employee whose application process violated the Agency's Privacy Act and Personally Identifiable Information (PII) regulations.
- I am the only NRPC, MSS, Management Analyst who has experienced the different and prohibited personnel practice:
- I am the only NRPC, MSS, Management Analyst employee, where my Personally Identifiable Information (PII) was electronically available to everyone in the office.
- I am the only NRPC employee, that:
  - ❖ Six or more office co-workers were asked to provide their advice on my application package
  - ❖ Six or more office co-workers were asked to provide help on a application package
  - ❖ Six or more office co-workers were asked to review my application package
  - ❖ Six or more office co-workers were asked to provide written comments on my application package
  - ❖ Six or more office co-workers were asked to possibly reduce the list of candidates
  - ❖ Six or more office co-workers were asked to possibly select a winner
  - ❖ Six or more office co-workers were asked to possibly modify the original skill set of the job

- I am the only NRPC, MSS, Management Analyst employee whose application package was reviewed and commented on by a group of employees, none of which made the Best Qualified Listing within that 60 days of rating my application.
- I am the only NRPC, MSS, Management Analyst employee who may or may not have received an interview based on 6 or more office co-workers comments (regardless of their expertise).
- I am the only NRPC, MSS, Management Analyst employee, where 6 co-workers that have never worked in the position, or have did this kind of work for the agency were able to review and comment on an applicant.
- I am the only NRPC, MSS, Management Analyst employee whose application package was scrutinized by 6 co-workers.
- I am the only NRPC, MSS, Management Analyst employee that applied for a position and an e-mail was sent out to the 6 or more voting , GS-12's, office co-workers; stating "Mr. Griffith was one of our recent favorites and was an alternative if Dan Hunter was not available. He interviewed well."

## Harassment

**Conduct:** Retaliation, Discrimination and Disparate treatment:    **Defendant:** Agency

I am the only NRPC employee the Agency did not pay for their hearing transcript, causing me to be:

- the only NRPC employee that Midwest Litigation Services, requested I Pay for the transcript twice.
- the only NRPC employee that Midwest Litigation Services sent an invoice stating I was 108 days late paying.

**In addition, after I filed my Formal complaint and/or received the Counselors' report ( I attempted to amend):**

## Harassment

**Description of specific conduct that was discriminatory/retaliation and the defendant.**

**Conduct:** Retaliation, Discrimination and Disparate treatment:    **Defendant:** Agency

**The Agency:**

- Expunged my forms; wanted me to change and re-do complaint; after counselor closed
- Told me, I could not file "Failure to Promote", then suggested I should
- Threaten to "Dismiss my case" for filing a Formal Complaint timely
- Consistently changed their advice on the filing type, pertaining to "Failure to Promote"
- Counselor continued contacting/harassing me after he closed the case

**The Agency changed:**

- The dates and content of the EEO counselors' contact
- The regulation time to which I could file a Formal Complaint
- My original complaint Failure to Promote>Select, even though I received EEO counseling pertaining to the selection
- My complaint pertaining to the transcript payment and harassment to a complaint about the previous EEO case
- What they originally told me about Amending a complaint

## Failure to Promote

### Description of specific conduct that was discriminatory/retaliation and the defendant.

**Conduct:** Retaliation, Discrimination and Disparate treatment:    **Defendant:** Supervisor of the MSS

Direct evidence of retaliation and discriminatory intent, was seen on December 18, in the Counselor's report:

*"it was crucial to the success of the Management System Staff, as well as the new employee that my senior members would recognize and accept the final selectee into their informal circle"* stated the selecting official.

- I am the only NRPC employee applicant that must meet these criteria.
- I am the only NRPC, Management Analyst employee applicant that the senior members would have to recognize and accept into their informal circle.
- I am the only NRPC, MSS, Management Analyst employee whose application package was used as an "team building initiative"
- I am the only NRPC employee whose application package was used " In the interest of promoting team integrity and harmony"
- I am the only NRPC employee whose application package was used, "to foster team integrity and unity"

*" While Ms Cross possessed retail procurement/acquisition experience in her work history, those skills are not directly applicable to this position"*, stated the selecting official.

- I am the only NRPC, Management Analyst employee applicant that has used the GSA schedule, the 3 bid proposal, Best Value Method and the Request for Quotation (RFQ) process. I had additional procurement/acquisition experience serving on the Tax Incremental Fund (TIF) committee (Appointed by the Mayor of St. Louis), serving on the Board of Directors of a Credit Union along with the being the manager of a retail store, and worked with more than 20 contractors at NRPC.

- I am the only National Personnel Record Center (NPRC) employee whose federal experience within the agency was not considered/mentioned.
- I am the only National Personnel Record Center (NPRC) employee whose Mayoral appointment experience was not considered/mentioned.
- I am the only National Personnel Record Center (NPRC) employee who's Credit Union, Board of Directors experience was not considered/mentioned.

**E**

# **Aggrievements**

## AGGRIEVEMENT

An employee is "aggrieved" if he has suffered direct and personal deprivation at the hands of the employer.

**Unknown Aggrievement:** I believe maybe there are:

- Unknown distributions, forwarded of e-mails, printouts, transmissions, flash drives copies, and possible remote access done
- Unknown PII accessibility and risk
- Problems unknown and unforeseen

**My Aggrievements known at this time:**

Less income	Smaller office space	Less in retirement	Loss of Privacy
Exposed PII	Risk of Identity theft	Stress	Embarrassment
Loss of Sleep	Loss of concentration	Mental Anguish	Increased Blood Pressure
I feel singled out	Aggravation	Humiliation	Credit score worry

Discouraged from EEO process

Discouraged from applying for jobs

Fear – what will the Agency will do next

Unequal competition - Co-workers have an Advantage, viewing my application

Loss of Vacation (Feb)	Loss of work friends	Loss of Social life
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Loss of Personal and Family Time - evenings, weekends and holidays

Loss of Money - office supplies, copies, booklets/folders postage, ink cartridges gas

Delay in house repairs, in case I need money to get a lawyer

In conjunction with:

**Annual Leave and Sick Leave taken for going to:**

UPS    FedEx    Lawyer visits    Copying facility    Post Office to mail

**Along with the above mentioned:**

Legal fees	Continuing to receive GS-12 work, without the Pay
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F

## **Suggested settlement**

Rosalind M. Cross 1122STL

**Suggested Settlement:**

Reimburse original legal fees and admin cost to date: Total = \$ 600.00

Reimburse for current legal fees and admin cost: Current total = \$620.00

Positive referrals and good references

20 days Compensatory time

6 days Annual leave restored

Promoted to a GS-12, step 10, Management Analyst for the Management System Staff :

To be backdated 3 years with the appropriate and applicable personnel actions and benefits

Back pay and liquidated pay for 3 years

At and for the Dunn Road facility.

GS-12 office at the Dunn Road facility

Upon request, Involuntary (Immediate) retirement within the next 18 months

Lump sum payment of \$ 1, 500,000.00

**Abbreviations/Acronyms:**

National Personnel Record Center = NPRC

Management System Staff = MSS

Personal Identifying Information = (PII)

**Defendants**

Supervisor of the MSS

Director of NRPC

Agency

**Definitions Applied:**

**Retaliation**

**Adverse Action**

An adverse action is an action taken to try to keep someone from opposing a discriminatory practice, or from participating in an employment discrimination proceeding. Examples of adverse actions include:

- employment actions such as termination, refusal to hire, and **denial of promotion**,
- other actions affecting employment such as **threats**, unjustified negative evaluations, unjustified negative references, **or increased surveillance**, and
- any other action such as an assault or unfounded civil or criminal charges that are **likely to deter reasonable people from pursuing their rights**.

Even if the prior protected activity alleged wrongdoing by a different employer, retaliatory adverse actions are unlawful. For example, it is unlawful for a worker's current employer to retaliate against him for pursuing an EEO charge against a former employer.

Of course, employees are not excused from continuing to perform their jobs or follow their company's legitimate workplace rules just because they have filed a complaint with the EEOC or opposed discrimination

**Disparate Treatment:**

- a. Inconsistent application of rules and policies. Discrimination may result when rules and policies are applied differently to members of protected classes.
- b. When a person is treated differently from others. The different treatment is based on one or more of the protected factors and the different treatment is intentional

**Harassment and obstruction**

Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Harassment can occur in a variety of circumstances, including, but not limited to, the following:

- The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
- The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
- Unlawful harassment may occur without economic injury to, or discharge of, the victim. *Read more about harassment*
- Obstruction is an attempt to interfere, tamper with, change or hide the truth.